



INTERIOR BOARD OF INDIAN APPEALS

Clementine Rice, et al. v. Portland Area Director, Bureau of Indian Affairs

19 IBIA 12 (10/11/1990)

Clarifying:

18 IBIA 412



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

CLEMENTINE RICE, ET AL.,
Appellants

v.

PORTLAND AREA DIRECTOR,
BUREAU OF INDIAN AFFAIRS,
Appellee

: Order Granting Reconsideration
: for Purposes of Clarification
:
:
: Docket No. IBIA 90-135-A
:
:
: October 11, 1990

On September 4, 1990, the Board dismissed as untimely an appeal from Clementine Rice, Ralph E. Young, and Corinne K. Hill. Appellants had sought review of a July 13, 1990, decision of the Portland Area Director, Bureau of Indian Affairs, holding that 37 individuals were qualified to be enrolled in the Cow Creek Band of Umpqua Tribe of Indians under 25 U.S.C. § 712c (1982 and Supps.). See 18 IBIA 412.

On October 9, 1990, the Board received a letter from appellant Clementine Rice, which the Board treats as a request for reconsideration. Ms. Rice states

My notice of appeal mailed to you on August 20, 1990, enclosed a list of 56 names. Your letter of dismissal * * * addressed only a portion of the names on that appeal. --37 names were dismissed as the appeal had not been filed within the thirty day time frame for appeal. However, 19 names of [sic] my August 20, 1990, letter of appeal were filed in a timely manner and in compliance with 25 CFR 62 and 25 CFR62.5(c).

Would you please address the status of the 19 names not covered in your dismissal letter of September 4, 1990.

Ms. Rice does not explain the theory under which she seeks to have the Board consider the enrollment of 19 individuals who were not considered in the Area Director's decision. If the Board had jurisdiction over enrollment appeals, which, as stated in its initial decision in this matter, it does not, it would still lack jurisdiction over matters not addressed in the BIA decision on appeal. See, e.g., Florida Tribe of Eastern Creek Indians v. Deputy Assistant Secretary--Indian Affairs (Operations), 13 IBIA 269 (1985). In this case, the Area Director's decision at issue addressed only 37 individuals.

It is possible that, had this appeal proceeded, appellants would have argued that they had challenged the enrollment of the 19 individuals before the Area Director and that he had improperly failed to consider their challenge. At this point, however, it does not matter what theory appellants would have pursued, or how many individuals' enrollment they intended to challenge, because they lost their right to pursue this matter at all when they failed to file a timely notice of appeal.

Reconsideration is granted for the purpose of clarifying that the Board's order of September 4, 1990, dismissed appellants' appeal in toto, regardless of the number of individuals whose enrollment they intended to challenge.

//original signed

Anita Vogt
Administrative Judge

//original signed

Kathryn A. Lynn
Chief Administrative Judge